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Docket No. _____

In The

Supreme Court of The United States

October Term 1998

Paul Max Quandt, Jr.,- Petitioner

Vs.

State of Tennessee - Respondent

"On Petition for Writ of Certiorari To

The Supreme Court and Court of Criminal Appeals of Tennessee"

"Petition for Writ of Certiorari"

Paul Max Quandt, Jr.
3145 Old Estill Spgs Rd.
Winchester, Tn. 37398
(931) 967-1612

37 pp

Questions Presented

1. Did the Courts err when not following Rules of Procedure and Due Process?

2. Do the Courts have to abide by the Constitution of the United States and the State of Tennessee?

3. Are the Officers of Court who have signed and swore an "Oath " to support the Constitution of the United States and the State of Tennessee in not doing so in violation of this contract?

List Of Parties

All Parties appear in the caption of the case on the cover page.

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Petitioner, Paul Max Quandt, Jr., request that a writ of certiorari be issued to review the judgement in this case.

Opinions Below

The opinion of the Court of Criminal Appeals for Tennessee No. 01C01-9610-CC-00423 is an unpublished opinion and is reproduced in the appendix to the petition (App. A). The order denying Petition for Rehearing is (App. B). The order from the Supreme Court of Tennessee denying Permission To Appeal (App. C). An unpublished opinion is not binding.

Statement Of Jurisdiction

The date on which the court of appeals decided the case was September 18, 1997. A copy of that decision appears at Appendix A. A petition for rehearing was filed and denied on the following date: November 14, 1997, and a copy of the order denying hearing appears at Appendix B. A petition for application for permission to appeal to the Supreme Court of Tennessee was denied September 14, 1998, and a copy of the order denying application for permission to appeal appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C § 1257 (a) and § 1254 (1).

Constitutional and Statutory Provisions Involved

Tennessee Constitution:

Article 1, Section 4,
"That no political or religious test, other than an oath to support the Constitution of the United States and of this state, shall ever be required as a qualification to an office or public trust under this state."

Article 11, Section 16,
"The declaration of rights hereto prefixed is declared to be a part of the Constitution of the state, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is expected out of the general powers of the government, and shall forever remain inviolate."

Tennessee Rules Criminal Procedure

Rule 10,
Arraignment. -(a) Except as provided in Rule 43, before any Person is tried for the commission of an offence, he shall be called into open court and arraigned. (b) The arraignment shall consist of reading the indictment, presentment or information

to the defendant or stating to him the substance of the indictment, presentment or information, and calling him to plead thereto. He shall be given a copy of the indictment, presentment or information before he is called upon to plead. An entry of record shall be made of the arraignment."

Rule 11,
Pleas. -(a) Alternatives. - A defendant may plead not guilty, guilty, or nolo contendere...

Rule 24,
Trial Jurors. - (a) Examination. - The court shall cause the prospective jurors to be sworn or affirmed to answer truthfully the questions they will be asked during the selection process...

Rule 33,
New trial. - (a) Motion for a New Trial. - The court on its own motion, or on motion of a defendant may grant a new trial to him as required by law... time for Motion. - A motion for new trial shall be made in writing, or if made in open court shall be reduced to writing...

United States Constitution:

Amendment 4,
...The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizure, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation,

and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5,
...nor shall any person be subject for the same offense be twice put in jeopardy of life or limb... nor be deprived of life, liberty, or property, without due process of law...

Amendment 6,
...In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed...and be informed of the nature and cause of the accusation...

Amendment 14, Section 1,
...All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article 6, Section 1,
...shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Statement of The Case

On May 22, 1995, Citizen Paul Max Quandt, Jr., filed a Motion For Judgment of Acquittal. It was brought to the courts attention that by Tenn. Crim. Proc. Rules 10 and 11, there had been no arraignment or plea made on some of the charges to be tried. This had been brought to Judge Perry's attention on April 26, 1995, during the trial and Judge Perry stated this could be grounds for an appeal.

With knowledge of the law and with knowledge of procedure the Circuit Court of Franklin County, Tennessee, did not have the authority to have a second new trial. The first trial took place on April 27, 1995, and the jury returned a verdict of not guilty on one count and a mistrial on three other counts. With knowledge of the law and knowledge of procedure the only thing that could be asked for by Assistant District Attorney Steven Blount was for a re-trial. This re-trial was not asked for, but a new trial date was asked for (See Appellant Brief Appendix, Tab 4, Pages 7-10), Rule 33, Tennessee Rules Criminal Procedure states that only the court on its own motion, or on motion of a defendant may grant a new trial as required by law. If a motion for new trial is made by the court or the defendant it must be reduced to writing within thirty (30) days. The Assistant District Attorney Blount could not ask for a new trial but, Blount did and received a new trial in violation of Rules of Criminal Procedure.

On October 10, 1995, Citizen Quandt, Jr., filed a Motion To Dismiss For Lack of Jurisdiction, it was

brought to the courts attention that proper procedure pursuant Rule 33 had not been followed. Because of this failure to follow procedure this action died for lack of jurisdiction and lack of prosecution. A re-trial has never been asked for or ordered.

On October 18, 1995, the Circuit Court proceeded with the new trial that had been requested by Assistant District Attorney Blount.

On October 18, 1995, with knowledge of the law and will of intent Officers Paul Hill and Ken McCormick gave a different testimony from the testimony given in the first trial, the Court was given notice by objection of Citizen Quandt, Jr., and the Court and the District Attorney Blount refused to stop this perjury. With knowledge of the law and will of intent Officers Hill and McCormick came on private property without a 4th Amendment Warrant. The Judge had not heard a recording or read the transcript of the first trial and admitted this when asked by Citizen Quandt, Jr. After the trial it was discovered that Assistant D.A. Blount's former secretary's husband was on the jury panel this was not brought to the attention of the court during voir dire Blount had asked if any prospective juror knew either side. With knowledge of the law and with knowledge of procedure Tenn. Crim. Proc. Rule 24 (a) states: " The court shall cause the prospective jurors to be sworn or affirmed to answer truthfully ... during the selection process..." the prospective jurors

were not sworn. Citizen Quandt, Jr., requested the Judge to Poll the jury but, the Judge refused.

Citizen Paul Max Quandt, Jr. filed a Petition For Rehearing of the Opinion filed on September 18. 1997. With knowledge of the law the Franklin County, Tennessee, Grand Jury Foreman does not have the "oath" required by the Constitution of the State of Tennessee, Article 1, Section 4, says any office or public trust under this state must take an oath to support the Constitution of the United States and of the State of Tennessee. With knowledge of the law the Grand Jury Foreman does not have this oath as required.

The Constitution of the State of Tennessee also states in Article 11, Section 16, that the declaration of rights shall never be violated on any pretense whatever, Article 1, Section 4, is a part of the declaration of rights. This Petition For Rehearing was denied November 14, 1997. The Permission to appeal to the Supreme Court of Tennessee was denied September 14, 1998.

Reason For Granting the Petition

1. Did the Courts err when not following Rules of Procedure and Due Process?

The Rules of Civil and Criminal Procedure are set forth for all actions in the Court and for all Parties to the actions in Court. If the Citizen does not follow the Rules of Procedure then an action cannot be maintained in the Court System – there is no Jurisdiction.

With knowledge of the law and knowledge of the rules of procedure the Respondent has violated the rules of procedure.

(a). There was no arraignment of the Citizen Paul Max Quandt, Jr. as stated in Rule 10, Tenn. Crim. Proc.

(b). There was no plea made by the Citizen Paul Max Quandt, Jr., as stated in Rule 11, Tenn. Crim. Proc.

(c). On April 27, 1995, in the first trial the jury returned a verdict of not guilty on one count and a mistrial on three other counts. With knowledge of the law and knowledge of the Rules of Procedure on May 25, 1995, the Assistant District Attorney Steven Blount asked for a new trial date, the Court then set a new trial date. (See Appellant Brief Appendix, Tab 4, Pages 7-10 transcript from court). With knowledge of the law and knowledge of procedure the only request would be for a re-trial but, Asst.

D.A. Blount failed to request a re-trial and the action died for lack of jurisdiction and lack of prosecution. With knowledge of the law and with

knowledge of procedure the only one to order a new trial date was the Court. The Court could on its own or the Citizen could ask for a new trial date. The Assistant D.A. Blount did not have the authority to ask for a new trial date, but did and was granted a new trial date. The action was dead after this time because of failure to follow procedure and request a re-trial. The court never granted a re-trial because Blount never asked for a re-trial. With knowledge of the law the court returned the evidence introduced by Citizen Quandt, Jr. at the end of the April 27, 1995, trial. With knowledge of the law due process and guarantees of the Constitution have been violated and Rule 33 Tenn. Crim Proc. has been violated. The Officers of Court could not acquire a conviction in the first trial so a second erroneous trial was held and the testimony of the police officers was changed (perjury) and the jury was tampered with.

(d). In the second trial, October 18, 1995, the jury was not sworn before voir dire. Rule 24, Tenn. Crim. Proc. states, the court shall cause the prospective jurors to be sworn or affirmed to answer truthfully the questions ... asked during the selection process... With knowledge of the law and procedure the jury was tampered with, Assistant D.A. Blount's secretary's husband was on the jury of the second trial. The 6th Amendment United States Constitution guarantees the right to a trial by an impartial jury. The assurance of a fair and impartial trial is a basic ingredient of the due

process of law guaranteed by the 5th and 14th Amendment United States Constitution.

The Supreme Court has become sensitive to harmful irregularities in the jury process, In Parker v.Gladden, 385 US 363, 17 Led (2d) 420, 87 SCt 468 (1966), the Supreme Court ruled that remarks made to several jury members violated the defendant's right to a fair trial . There must be a fair and impartial jury panel to select from.

2. Do the Courts have to abide by the Constitution of the United States and the State of Tennessee?

In the Tennessee Constitution, Article 1, Section 4, and United States Constitution Article 6, Section 1, says ... any office or public trust shall be bound by oath or affirmation to support the Constitution ... The Grand Jury Foreman is a public trust or office. With knowledge of the law the Grand Jury Foreman for Franklin County, Tennessee, does not have this oath to support the Constitution of the United States and the State of Tennessee. The Grand Jury Forman has no authority to act and to do so is an action under fraud. With knowledge of the law the Officers of Court having taken an "oath" to support the Constitution of the United States and the State of Tennessee are acting under fraud and in violation of the "oath" sworn to and signed and are not seeing the Grand Jury Foreman has taken the proper oath as required by the Constitution.

3. Are the Officers of Court who have signed and swore an "Oath" to support the Constitution of the United States and the State of Tennessee in not doing so in violation of this contract?

With Knowledge of the law and will of intent Officers of the Court have sworn an "oath" and signed to the guarantees of the Constitution of the United States and the State of Tennessee, this includes due process, fair trial and equal protection of the law. With knowledge of the law and will of intent the police officers did committ perjury and an objection was made during the trial, but the court refused to stop this perjury. With knowledge and will of intent the Assistant District Attorney Blount accepted and encouraged this testimony. With this knowledge Assistant Attorney General Peter Coughlan stated in Brief for the State page 10, Fourth ... "The defendant had time to cross-examine them to expose alleged inconsistencies in the testimony. The jury properly credited the officers' version of the events over that of the defendant"...

With knowledge Coughlan has sworn and signed an "oath" to the Constitutions of the State and the United States and failure to uphold this oath is perjury and fraud.

Conclusion

With knowledge of the law perjury is not acceptable in a court of law even if a jury believes it, Officers of Court using this method are acting in a criminal manner. With knowledge of the law the Assistant District Attorney Blount or Assistant Attorney General Coughlan have not denied that perjury took place from one trial to the other

as the two Officers of Court cannot deny this fact because the transcript would show this perjury by the two officers.

The Circuit Court did not have jurisdiction of this action to have a second new trial because it died for lack of prosecution and the Officers of Court do not have the right to use a position as an Officer of the Court to fail to uphold the Constitution of the United States and the Constitution of the State of Tennessee and The Tennessee Rules of Criminal Procedure and to allow perjury under oath in a court of law. If the Courts are allowed to proceed in this manner then other Citizens in similar situations are in danger and perjury is a crime. This type of results cannot be allowed in this land and can only be corrected by this Court's intervention.

For reasons stated herein, Paul Max Quandt, Jr., request this Petition For Writ of Certiorari be granted.

Respectfully submitted,

Paul Max Quandt, Jr.
3145 Old Estill Springs Rd.
Winchester, Tn. 37398
(931) 967-1612

Appendix A – Unpublished Opinion Of The Court of Criminal Appeals For Tennessee Filed September 18, 1997

Unpublished

Court of Criminal Appeals
At Nashville

No.01C01-9610-00423

State of Tennessee,

Appellee,

v.

Paul Max Quandt, Jr.,

Appellant.

Appeal from the Circuit Court
Franklin County, Tennessee
John W. Rollins, Judge
C.C. No. 9667 and 9821

Opinion

The defendant appeals, pro se, a jury verdict finding him guilty of resisting arrest and simple assault. The jury assessed a fine of $500.00 for resisting arrest and $50.00 for simple assault. The trial judge imposed a sentence of six months, suspended, for resisting arrest, and six months, suspended, for assault, consecutive to the sentence for resisting arrest. The trial judge required one hundred hours of unpaid community service.

The defendant filed a timely motion for new trial, alleging that the court decreed consecutive sentences contrary to the statute and case law. The defendant, pro se, filed an additional motion for new trial some four and one-half months later, on April 25, 1996. An order was entered on April 26, 1996, overruling the motion for new trial. There was no indication on the order otherwise, so this Court assumes the trial court allowed the amendment and considered all issues.

The defendant presents the following issues for consideration:

1. Whether the trial court had the jurisdiction and authority to hear this case, whether it was an erroneous trial, and whether the trial court followed proper procedure and due process;

2. Whether the court erred when no plea or arraignment was made on part of the charges;

3. Whether the court erred by not filing a written order on all motions before trial;

4. Whether the court erred when perjured testimony was used by the officers and the Assistant D.A. knew this perjured testimony was used to sway the minds of the jurors;

5. Whether the court erred when it pronounced consecutive sentences;

6. Whether the court erred in not ordering a new trial upon learning that a member of the jury panel was the husband of the Assistant D.A.'s former secretary;

7. Whether the court erred when it continued to allow the Assistant D.A. to prosecute the defendant after being notified that a federal lawsuit was pending against the Assistant D.A.;

8. Whether the court erred when it proceeded with the prosecution against the defendant when there was no reason for the officers to be on the private posted property without a valid warrant;

9. Whether the court erred when it kept a small handgun of the defendant;

10. Whether the court erred in failing to enforce a prior order entered by the court;

and

II. Whether the court erred by proceeding on an indictment not properly completed.

Procedural Background

The defendant was indicted by the Franklin County grand jury in July, 1994, for the offense of evading arrest, resisting arrest, and vandalism. He was also indicated by the Franklin County grand jury in September,1994, for the offenses of aggravated assault, unlawful possession of a weapon, and felony possession of a weapon. The cases were consolidated for trial.

The state elected to proceed on the charge of evading arrest, but the remaining charges were presented at a jury trial in April, 1995, with the Honorable Buddy D. Perry presiding. The trial judge did not allow the misdemeanor weapons charge to go to the jury. The jury found the defendant not guilty of the offense of felony possession of a weapon, but was unable to reach a unanimous verdict on the charges of resisting arrest, vandalism, and the lesser included charge of simple assault.[1] The trial judge declared a mistrial on the three remaining misdemeanor charges and the matter was reset for another court date with regard to those changes.

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[1] The aggravated assault was apparently reduced to simple assault, but it is unclear whether this action was the result of the jury acquittal or dismissal by the judge.

Those charges were set for jury trial to be held on August 21, 1995, before the same trial judge. The state alleges that the defendant did not appear for trial on that date.[2] Due to the possible conflict that the original trial judge might have as a witness in the defendant's failure to appear charge, the Tennessee Supreme Court designated the Honorable John Rollins as special trial judge to hear the misdemeanor cases.

On October 18, 1995, the three misdemeanor charges were retried. The jury returned a not guilty verdict on the charges of vandalism, but returned guilty verdicts on the charges of resisting arrest and simple assault.

Factual Background

The Tennessee Department of Transportation was conducting preliminary surveying work in Franklin County for a state highway project. They alleged that the defendant, Paul Max Quandt, Jr., refused to allow employees and persons acting on the behalf of the State of Tennessee to perform the necessary survey work across certain lands in Franklin County.

The Department of Transportation filed a civil action against the defendant in the Circuit Court of Franklin County for a resolution of this dispute.

The defendant appeared in court, representing himself. The matter was heard by the Honorable Thomas W. Graham, Circuit Judge, who entered an order in

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[2] The defendant was later indicted by the Franklin County grand jury for his failure to appear on the August trial date.

February, 1994, finding the defendant, proceeding pro se, was continually disrespectful, disruptive, and argumentative, which culminated in the defendant's open defiance of the court's order by walking out of the hearing. The court granted the request by the Department of Transportation for an injunction prohibiting the defendant from interfering with the necessary survey work. As a result of that hearing, the court found the defendant to be in contempt of court, and issued an order to the Sheriff to forthwith attach the body of the defendant and hold him in jail for a prescribed period.

Deputies with the sheriff's department went to defendant's farm in an effort to enforce the order and take the defendant into custody. They observed the defendant and the defendant's son near a building. It appeared to one of the officers that the defendant looked in the direction of the marked patrol car and ran toward a building. They spoke with defendant's son, who would not indicate where the defendant had gone, and wanted to see "the paper work." One officer went in the direction where he observed the defendant go and saw the defendant hiding in the fence row underbrush. The officer told the defendant to come out, and told him that the sheriff's department had been ordered to pick him up. The defendant came out of the fence row, indicating that he had a gun and that he was not going to be arrested.

The officer became concerned for his own safety and attempted to place his hands on the defendant's arm or shoulder. The defendant pulled away, knocking the officer's glasses off. The glasses broke, and the officer and defendant began pushing. A second officer helped subdue the defendant.

The officers found on the defendant's person a loaded gun, which was introduced as an exhibit at the trial.

The defendant was taken to jail pursuant to the court-ordered body attachment.

The trial testimony was not transcribed. The record on appeal consists of a narrative statement of the evidence.

Jurisdiction, Double Jeopardy, and the Dirty Diaper

The defendant complains that he has been passed from court to court, and that the trial and re-trial have violated his constitutional rights to such a extent that Circuit Court had no jurisdiction to try his case. He complains that his situation is similar to a young baby with a dirty diaper. The baby is passed from one person to another as each discovers the problem, but sooner or later someone has to change the dirty diaper. The defendant claims he's been passed from one circuit judge in a civil case, to another in a criminal case, and to yet another in a re-trial, and that no new evidence was introduced and his trial was erroneous.

This court does not reweigh or re-evaluate the evidence after a jury has found a defendant guilty. We are required to afford the state the strongest legitimate view of the proof contained in the record as well as all reasonable and legitimate inferences which may be drawn therefrom. State v. Cabbage, 571 S.W. 2d 831 (Tenn. 1978). A guilty verdict rendered by the jury and approved by the trial judge accredits the testimony of the witness for the state, and a presumption of guilt replaces the presumption of innocence.
State v. Grace, 493 S.W. 2d 474 (Tenn. 1973). The jury by its verdict changed the dirty diaper.

The defendant complains that after the jury was unable to reach a decision in his first trial, the court granted a new trial. The defendant complains that the court had no authority to grant a new trial, but could grant a re-trial. This court finds that the defendant was granted a re-trial. The defendant further complains that there is no authority for a re-trial, and that this a violation of due process and double jeopardy. This court finds otherwise. In the event that a jury is not able to make a decision, and is a "hung jury," a re-trial can be allowed since a deadlocked jury constitutes a manifest necessity justifying a mistrial. Richardson v. United States, 468 U.S. 317, 104 S.Ct. 3081, 82 L.Ed. 2d 242 (1984); State v Mounce, 859 S.W. 2d 319 (Tenn. 1993).

Re-trial due to mistrial resulting from a deadlocked jury does not constitute double

jeopardy. State v. Witt,- 572 S.W. 2d 913 (Tenn. 1978).

The defendant complains that Circuit Court did not have jurisdiction over this proceeding. Tennessee Code Annotated 40-1-108 grants Circuit Court original jurisdiction of all criminal matters. The defendant was originally charged with a felony, aggravated assault, which would require that matter be filed in Circuit Court. Circuit Court also had jurisdiction of the three misdemeanor charges, one of which the defendant was found not guilty, and the two for which he was found guilty. The trial court did not lose jurisdiction at some point during these trials.

This issue is without merit.

Plea or Arraignment

The defendant complains that he was tried on this matter when he was not properly arraigned. However, there is nothing in the record to indicate the defendant was not arraigned. This argument was not brought up in the trial court and has been waived. The purpose for an arraignment is to provide the defendant with notice of the charges against him. Wright v. State, 1994 Tenn.Crim App.LEXIS 434 (1994). From a review of the record, it is obvious that the defendant had notice of the charges. This issue is without merit.

Written Orders on Motions

The defendant filed numerous motions with the trial court. The record contains many orders ruling on various

motions. The defendant objects to no written order with regard to certain motions including a motion objecting to double jeopardy, a motion to dismiss for lack of jurisdiction, a motion objecting to Judge Rollins, and a motion to dismiss. The record reflects that the trial court ruled from the bench with regard to various motions and filed written orders with regard to various motions.

At the hearing on the motion for new trial, the trial court noted that the trial court ruled with regard to various motions, and the defendant would file new motions on the same subject. The defendant was actually still objecting to his original motion to dismiss in the first trial which was denied by the original trial court. The defendant has failed to show how he has been prejudiced in any way with regard to this issue, and the issue is without merit.

Former Testimony

The defendant complains that officers who testified at the trial perjured themselves by testifying differently at the re-trial than they did at the original trial. He complains that the Assistant District Attorney knew of this perjured testimony, and that the trial judge should have been aware of it if he reviewed the original transcript.

The record reflects that the defendant did cross examine the officers and attempted to impeach

them by showing that their current testimony was different from former testimony.

Credibility of witnesses is a matter entrusted to the jury as the triers of fact. State v. Sheffield, 676 S.W. 2d 542 (Tenn. 1984). This issue is without merit.

Consecutive Sentences

The record reveals that the jury trial occurred October 18, 1995, and that the sentence hearing was held on November 16, 1995. However, there is nothing for this court to review with regard to the proceedings at the sentencing hearing. The record merely reveals that after listening to the State's position regarding sentencing, and after listening to the defendant's position, the court sentenced the defendant to six months supervised probation on the resisting arrest charge, imposed the jury's fine of $500.00 plus court costs, and ordered the defendant perform one hundred hours of public service work. The court sentenced the defendant to six months supervised probation on the assault charge, to run consecutive to the resisting arrest probation, and imposed the jury's fine of $50.00 plus court cost.

The presumption of a minimum sentence does not apply to misdemeanors. The sentence must be consistent with the purposes and principles of the Criminal Sentencing Reform Act. The trial court is provided wide discretion. State v. McKnight, 900 S.W. 2d 36 (Tenn.Crim.App. 1994).

At the hearing on motion for new trial, the trial court noted that it could have required a period of confinement based on the facts of the cause, but the trial court only imposed a probated sentence and a total of probation of twelve months was deemed appropriate by the court.

The defendant was found guilty of assault, a violation of T.C.A. 39-13-101, which is a Class A misdemeanor. The trial court granted the defendant probation, and under T.C.A. 40-35-303 the defendant can be placed on probation for a maximum time for the class of conviction offense. In this case, the defendant was placed on probation for the maximum time for a Class A misdemeanor.

Based on the record before this court, we are unable to review the factors considered by the trial court for consecutive sentencing with regard to the six months for resisting arrest, and the six months for assault. However, both terms of confinement were suspended, and the defendant placed on probation, for the same effective sentence as he could have received for the Class A misdemeanor of assault. Therefore, if any error was committed, the same is harmless.

This issue is without merit.

Juror Conflict

The defendant alleges that the court erred in not ordering a new trial because a member of the jury panel was the husband of the former secretary to the Assistant District Attorney.

The voir dire was not prepared and presented in the record. However, from the record it can be determined that the defendant was given an opportunity during voir dire to question prospective jurors. The defendant was provided by the clerk with the names of prospective jurors, and the list provided indicated that the subject juror's spouse worked as a legal secretary. Also contained in the record is the statement that the juror complained of is married to a former legal secretary who was employed by the Assistant District Attorney when he was in private practice some years before this trial.

The defendant has not shown any prejudice. The fact that a member of his jury panel was the spouse of the former legal secretary of the Assistant District Attorney at some time long before does not automatically render the verdict reversible.

The defendant is entitled to an impartial jury. Hyatt v. State, 430 S.W. 2d 129 (Tenn. 1967). The jury must have an impartial frame of mind, be influenced by the legal and competent evidence produced during trial, and base its verdict upon evidence connecting the defendant with the commission of the crime charged. Durham v. State, 182 Tenn. 577, 188 S.W. 2d 555 (1945).

The statement of evidence presented to this court reflects that the defendant made no showing that the subject juror did not follow his oath as given by the court. The trial court polled the jurors by asking if they all agreed with the verdict, and they raised their hands agreeing with the verdict. The trial court found the jury was fair and impartial. A trial court's findings of jury impartiality may be overturned only for manifest error. State v. Cazes, 875 S.W.2d 253 (Tenn. 1994). The defendant has shown none.

This issue is without merit.

Conflict of District Attorney

The defendant complains that the court erred when it continued to allow the Assistant District Attorney to prosecute the defendant after being notified of a federal lawsuit was pending against the Assistant District Attorney. This issue was not brought up in the motion for new trial and was waived.

In any event, from a review of the briefs, and the entire record, there appears the allegation that Mr. Blount, the Assistant District Attorney, has been sued in Federal Court on January 30, 1995. However, there is no other statement indicating why there exists a conflict. While there are many allegations in the brief of appellant that the Assistant District Attorney was prejudiced against the defendant, used perjured testimony, and

generally acted unfairly, these allegations are not supported by the record before this court.

The defendant has failed to show prosecutorial vindictiveness. He has not shown that the prosecutor acted in order to punish him for standing on his legal rights; nor do the facts indicate a realistic likelihood of vindictiveness. State v. Brackett, 869 S.W. 2d 936 (Tenn.Crim.App. 1993).

This issue is without merit.

Valid Warrant

The defendant complains that when he was arrested the officers were on his private property which was posted, and that the officers were without a valid fourth amendment warrant.

This issue is brought up for the first time on appeal and is waived.

However, a review of the record reveals that on February 2, 1994, Circuit Judge Thomas W. Graham issued a body attachment for the defendant arising from contempt of court. The officers of the Franklin County Sheriff's Department entered upon land in an effort to secure the person of the defendant pursuant to that court order.

This issue is without merit.

The Hand Gun

The defendant complains that the court erred by retaining a hand gun, which was found on the defendant when he was arrested. This issue was not presented at the motion for new trial and is waived.

However, a review of the record reveals that the officer found on the defendant's person a loaded hand gun. The weapon, clip and ammunition were introduced as exhibit at the trial. The return of the exhibit is a matter to be addressed to the trial judge at the conclusion of this suit.

This issue is without merit.

Return of Money Per Order

The defendant complains that the court erred in failing to enforce a prior order entered by the court for the return of money. A review of the record shows an order was filed ruling on one of defendant's motions that required the return to the defendant of thirty five dollars ($35.00) which was taken from him upon his arrest. The return was ordered August 8, 1994. This is a matter that should be addressed by the trial judge, if the funds have not been returned to the defendant.

Improper Indictment

The defendant filed a motion to dismiss the indictments as not being properly completed. The motion was heard on April 20, 1995, and overruled.

The defendant complains that the indictments for resisting arrest and assault were not properly completed, as they were not signed by the prosecutor or the foreman of the Grand Jury. From an inspection of the indictments, the allegations of the defendant are not correct. The indictments from the July session, 1994, was drawn as a three count indictment, each count signed by the District Attorney General, and all three counts returned as a true bill, signed by the foreman of the Grand Jury, and filed by the clerk, signed by the clerk, listing the witnesses that appeared, and appears proper in form.

An examination of the indictment returned in the September session, 1994, again is signed by the District Attorney General, signed by the foreman of the Grand Jury, by the clerk, lists the witnesses who appeared, and appears proper in form.

This issue is without merit.

Therefore, the lower court is affirmed.

s/ Joe H. Walker,III

Sp. Judge

Concur:

s/Joe G. Riley, Judge

s/Curwood Witt, Judge

Appendix B – Order of The Court of Criminal Appeals of Tennessee
Order Denying Petition For Rehearing
Filed November 14, 1997

In The Court of Criminal Appeals Of Tennessee
At Nashville

C.C.A. No. 01C01-9610-CC-00423

State of Tennessee,

Appellee

v.

Paul Max Quandt, Jr.,

Appellant.

Order Denying Petition For Rehearing

The appellant has filed a petition requesting a rehearing of the opinion filed in this cause on September 18, 1997. After reviewing the petition to rehear, the Court finds that it is not well taken.

The petition for rehearing is denied.

Enter this the 14th day of November, 1997.

PER CURIAM
(Special Judge Walker, Judge Riley, and Judge Witt)

Appendix C - Unpublished Per Curiam Opinion of The Supreme Court of Tennessee Filed September 14, 1998

Unpublished

Supreme Court of Tennessee
At Nashville

No. 01C01-9610-CC-00423

State of Tennessee,

Appellee,

v.

Paul Max Quandt, Jr.,

Appellant.

Appeal from the Court of Criminal Appeals-
For Tennessee

Order

Upon consideration of the application for permission to appeal and the record before us, the application is denied with concurrence in results only.

PER CURIAM